tract is held to be voidable at the option of the company, there is, in legal theory, no necessity for consideration in exercising the power to avoid the policy. It remains legally operative in the absence of an affirmative act of avoidance. It has been definitely held that consideration is not necessary even where no circumstances of estoppel exist.[7] A surety may waive a defense given him by the fact that his creditor has given time to the principal debtor.[8] A party may waive the defense of the statute of limitations without consideration.[9] These are cases of technical defenses which the law regards with disfavor, as it does forfeitures in insurance.

In the instant case the court held that the insured was entitled to one month of grace after the maturity of the note. This holding was based on the fact that the statute specifically required a month of grace. But the statute required a month of grace *with interest,* and the insured here really had eight months of grace with interest. The note plainly specified that it was without grace. Where there is no such statute, the courts are uniform in not adding the period of grace to the time allowed by the note.[10] And under a similar statute the Michigan court refused to add the statutory period to the time allowed.[11]

It would seem that the court erred in holding that no forfeiture had ever occurred and that, if it had, the company was either estopped to show it or had waived the forfeiture.

PRIVILEGED COMMUNICATIONS TO PHYSICIANS

In the famous trial of the Duchess of Kingston for bigamy,[1] Lord Mansfield remarked that "if a surgeon was voluntarily to reveal . . . secrets, to be sure he would be guilty of a breach of honor, and of great indiscretion, but to give that information in a court of justice, which by the law he is bound to do, will never be imputed to him as any indiscretion whatever." Although the latter part of this dictum has become settled law,[2] strangely enough the first part, if the great Chief Justice meant to imply legal liability as attached to such a breach of confi-

[7] *German Ins. Co. v. Pitcher* (1902) 160 Ind. 392, 64 N. E. 921.

[8] *Hooper v. Pike* (1897) 70 Minn. 84, 72 N. W. 829.

[9] Wood, *Limitations* (4th ed. 1916) sec. 68.

[10] *Lefler v. New York Life Ins. Co.* (1906, C. C. A. 8th) 143 Fed. 814; *Bank of Commerce v. New York Life Ins. Co.* (1906) 125 Ga. 552, 54 S. E. 643.

[11] *Schmedding v. Northern Assurance Co.* (1912) 170 Mich. 528, 136 N. W. 361.

[1] *Trial of the Duchess of Kingston* (1776, H. L.) 20 How. St. Tr. 355, 573.

[2] At common law, information obtained while treating patients is not privileged in the sense that a physician can not be compelled to testify to such communication or knowledge upon the witness stand. Wharton, *Criminal Evidence* (10th ed. 1912) sec. 516; 1 Greenleaf, *Evidence* (16th ed. 1899) sec. 247a; see (1900) 64 JUSTICE OF THE PEACE, 241. But this rule has been changed by statute in a majority of American Jurisdictions. 40 Cyc. 2381; 17 Am. St. Rep. 570, note; Greenleaf, *op. cit.;* Evans, *Privileged Communications to Physicians* (1894) 39 CENT. L. J. 114, has a collection of statutory provisions with full discussion.

dence, had never been tested in an American court[3] until the recent case of *Simonsen v. Swenson* (1920, Neb.) 177 N. W. 831, which the court declares "is a novel one. No cases bearing directly upon the question have been cited by counsel, and our search has been unsuccessful." The defendant physician had examined a boarding-house guest and informed him that he was suffering from a highly contagious venereal disease. The defendant requested the plaintiff to leave, telling him of the danger of communicating the disease to others, and the latter promised to do so. The physician, upon learning from the proprietor that he was still there, informed the owner of the plaintiff's condition, and the latter was forced to leave, although in fact he was not afflicted as the defendant had diagnosed.

The imputation of a contagious venereal disease is actionable per se as slander;[4] but the case was not tried upon that theory, for both parties apparently agreed that the defendant had adequate grounds for his belief, acted without malice, and made only such disclosures as he thought reasonable and proper under the circumstances. The plaintiff sued for a breach of "the duty of secrecy," citing a statute[5] revoking the license of any physician guilty of unprofessional conduct, an instance of which is defined as "the betrayal of a professional secret to the detriment of a patient."

Although the court with doubtful accuracy construed this statute as creating a tort duty not to disclose such secrets, yet it held the communication to the owner privileged in the circumstances. The same result, however, could more readily have been reached by common-law principles, and Lord Mansfield might have been more directly vindicated. The relationship of physician and patient is one arising out of a consentual contract;[6] such a relationship manifestly implies an obligation of secrecy, and the disclosure of such confidences entails more than a literal "breach of honour." To attempt to deny such a principle or to set up its antithesis is perhaps the best means to make its necessity apparent. "That a medical man, consulted in a matter of delicacy, of which the disclosure may be most injurious to the feelings, and possibly, the pecuniary interests of the party consulting, can gratuitously and unnecessarily make it the subject of public communication, without incurring any imputation beyond what is called a breach of honour, and without the liability to a claim of redress in a court of law, is a proposition to which, when thus broadly laid down, I think the court will hardly give their countenance."[7]

As illustrated in the present case, there is a limit to this existing

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[3] See L. R. A. 1917 C, 1131, note.

[4] Newell, *Slander & Libel* (3d ed. 1914) sec. 215, with authorities collected.

[5] 1913 Neb. Rev. St., sec. 2721.

[6] *Bowers v. Santee* (1919) 99 Ohio, 361, 124 N. E. 238; see 22 A. & E. Encyc. 790, 798.

[7] Lord Fullerton in *A. B. v. C. D.* (1851, Scotch Court of Sessions) 14 Ct. of Sess. Cas. (2nd series) 177, 7 Scots Rev. Rep. 800, the only decision directly

duty: to preserve silence is a duty owed to the individual, but only as a member of society; and when absolute silence becomes detrimental to the public welfare, the duty ceases. When the confidential relationship of physician and patient discloses to the former a disease that will necessarily be transmitted to others unless the danger of contagion is made known to certain persons, public policy requires that there should no longer be any duty of complete secrecy. The duty of non-disclosure is then replaced by a legal privilege of giving information so far as this may be necessary to prevent the spread of the disease.[8] In respect to certain duly constituted authorities, there may be even a legal duty of making the disclosure.[9]

INCORPORATION OF NATIONALIST CLUBS

The Catalonian Nationalist Club of New York applied to a justice of the Supreme Court of New York for the approval of a certificate as a membership corporation. The object of the corporation was to make a center of representation of Catalonian culture and of the legitimate national aspirations of Catalonia in America, to diffuse information, to promote fellowship, and to unite with similar societies in this and other nations. The justice refused to approve the certificate saying that it had "been demonstrated in the recent past that the great need of the time is the teaching of American culture" and that the declared purposes of the corporation "if carried out to their ultimate completion, might result detrimentally to the interests of the United States." *Application of Catalonia Nationalist Club of New York* (1920, Sup. Ct.) 184 N. Y. Supp. 132.

The New York corporations law permits incorporation of a membership corporation "for any lawful purpose" and requires the approval of a justice of the supreme court before the certificate is filed with the secretary of state.[1] It has generally been held that in passing upon such a certificate the officer or court acts in a ministerial and not in a discretionary or judicial capacity.[2] In some jurisdictions a discretion-

in point, but apparently overlooked by counsel and the court in the instant case. See *Smith v. Driscoll* (1917) 94 Wash. 441, 442, 162 Pac. 572 (cited in the present decision): "Neither is it necessary to pursue at length the inquiry of whether a cause of action lies in favour of a patient against a physician for wrongfully divulging confidential communications. For the purposes of what we shall say it will be assumed that for so palpable a wrong the law provides a remedy." But see NOTES (1920) 20 COL. L. REV. 890, where the contract element is not discussed.

[8] See (1915) 79 JUSTICE OF THE PEACE, 3.

[9] Such as is created by statutes requiring the reporting of contagious diseases to boards of health. See Hemenway, *Public Health* (1914) secs. 32, 392 ff., 410; 20 Halsbury, *Laws of England*, 338.

[1] 3 Cons. Laws of N. Y. 1909, 3408.

[2] *State ex rel. College of Bishops v. Vanderbilt University* (1913) 129 Tenn. 279, 328, 164 S. W. 1151, 1164; 1 Clark & Marshall, *Private Corporations* (1903) 148.